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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1954.

No. 435

MANSON L. REICHERT,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals for the Seventh Circuit.

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COMMISSIONER OF INTERNAL REVENUE,
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PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals for the Seventh Circuit.

Petitioner respectfully prays that a writ of certiorari issue to review the opinion, decision and judgment of the United States Court of Appeals for the Seventh Circuit, entered in the above-entitled case on June 9, 1954.

OPINIONS BELOW.

The opinion, decision and judgment of the United States Court of Appeals for the Seventh Circuit (R. Appendix) is reported in 214 F. (2d) 19, and is printed in Appendix A.

The opinion of the Tax Court of the United States, entered June 18, 1953, is officially reported in 19 T. C. 1027, and appears herein in Appendix B (R. 311). The decisions of the Tax Court appear in Appendix C (R. 327, 328).

JURISDICTION.

The judgment of the United States Court of Appeals for the Seventh Circuit was entered June 9, 1954.

Jurisdiction was conferred on this court by 28 U. S. C., Section 1254.

Jurisdiction was conferred upon the United States Court of Appeals for the Seventh Circuit by Section 1141 (a) of the Internal Revenue Code, as amended June 25, 1948, and May 24, 1949, 26 U. S. C., Section 1141 (a).

QUESTION PRESENTED.

I. Constitutional and Statutory.

(1) Whether petitioner's verified motions to suppress evidence, which were filed contesting the validity and use of Vanderburgh County, Indiana, Grand Jury testimony, without first procuring judicial sanction, were for the purpose of consideration of the court in making its ruling, to be taken as true, unless and until controverted upon a trial of the issue made by it. Whether said motions were properly before the court by virtue of said motions.

Flum v. State (1923), 193 Ind. 585, 141 N. E. 353; **U. S. v. Borkowski** (D. C., 1920), 268 Fed. 408; **Gouled v. U. S.** (1921), 255 U. S. 298, 65 L. ed. 647, 41 S. Ct. 261; Boyd v. U. S. (1885), 116 U. S. 616, 29 L. ed. 746, 6 S. Ct. 524; Weeks v. U. S. (1914), 232 U. S. 383, 58 L. ed. 652, 34 S. Ct. 341, L. R. A. 1915 B 834, Ann. Cas. 1915 C 1177; Silver-

thorne Lumber Co. v. U. S. (1920), 251 U. S. 385, 64 L. ed. 319, 40 S. Ct. 182.

(2) Claims that the illegality of means used by Government agents in obtaining testimony render it inadmissible against one charged with fraudulent failure to report income should, if possible, be raised prior to trial.

U. S. v. Wallace & Tiernan Co., 336 U. S. 793, 93 L. ed. 1042, 69 S. Ct. 824; **Nardone v. U. S.** (1939), 308 U. S. 338, 84 L. ed. 652, 34 S. Ct. 341, L. R. A. 1915 B 834, Ann. Cas. 1915 C 1177; **Goldstein v. U. S.** (1942), 316 U. S. 114, 86 L. ed. 1312; Cornelius—Search and Seizure (2nd ed., 1930), Sec. 343; Silverthorne Lumber Co. v. U. S. (1920), 251 U. S. 385, 64 L. ed. 319, 24 A. L. R. 1426; U. S. v. Wernecke (C. C. A. 7, 1943), 138 F. (2d) 561; U. S. v. Frankfeld (D. C., Md.), 100 F. Supp. 934; Trupiano v. U. S., 334 U. S. 699, 92 L. ed. 1663, 68 S. Ct. 1229; McDonald v. U. S., 335 U. S. 451, 93 L. ed. 153, 69 S. Ct. 191; Flagg v. U. S. (C. C. A. 2), 233 F. 481; Roger v. U. S. (C. C. A. 1), 97 F. (2) 691; Agnello v. U. S., 269 U. S. 20, 70 L. ed. 145, 51 A. L. R. 409; Re Jackson, 96 U. S. 727, 24 L. ed. 877; Amos v. U. S., 255 U. S. 313, 65 L. ed. 654; U. S. v. Pillon (1941), 36 F. Supp. 567; U. S. v. Coplon (2 C. A. 1950), 195 F. (2d) 629.

(3) a. Grand Jury testimony cannot be disclosed unless by previous judicial sanction.

Secs. 9-817, 9-818, Burns' Indiana Statutes; 24 Am. Jur. 865, Grand Jury, Sec. 47; Anno., 127 A. L. R. 273 (II); State v. Fossett (1884), 16 Conn. 457; State v. Hamlin (1879), 47 Conn. 95, 36 Am. R. 54; Gitchell v. People (1893), 146 Ill. 175, 37 Am. St. R. 147; State v. Kemp (1939), 126 Conn. 60, 9 A. (2) 63; U. S. v. American Medical Assn. (D. C. 1939), 26 F. Supp. 429; Atwell v. U. S. (C. C. A. 4, 1908), 162 F. 97, 17 L. R. A. (N. S.) 1049, 15 Ann. Cas. 253; U. S. v. Kilpatrick (D. C. 1883), 16 F. 765.

b. The Indiana rule forbids disclosure of Grand Jury testimony unless by judicial sanction.

Burdick v. Hunt (1871), 43 Ind. 381; **Hinshaw v. State** (1897), 147 Ind. 334; **Burnham v. Hatfield** (1838), 5 Blackfd. 21; Shattuck v. State (1859), 11 Ind. 473; State v. Van Buskirk (1877), 59 Ind. 384.

c. No one has a right to confidential Grand Jury testimony without previous judicial sanction:

U. S. v. Kilpatrick (D. C. 1883), 16 F. 765; **Metzler v. U. S.** (9 Cir.), 64 F. (2d) 203; **U. S. v. Amazon Ind. Chemical Corp.** (D. C. 1931), 55 F. (2d) 254; U. S. v. Providence Tribune Co. (D. C. 1917), 241 F. 524; U. S. v. Phil. & R. R. Co. (D. C. 1915), 221 F. 683; Goodman v. U. S. (C. C. A. 9, 1939), 108 F. (2d) 516, 4 Bl. Com. 126; 1 Chitty Cr. L. 317; Davis v. U. S., 328 U. S. 582, 90 L. ed. 1453, 66 S. Ct. 1256 (dissenting opinion of Frankfurter, Murphy, J. J.).

II. The Substantial Rights of the Petitioner Have Been Materially Affected by the Lower Courts Erring In:

(1) Refusing to permit a pre-trial hearing on Petitioner's Motions to Suppress Evidence.

(2) Permitting State Grand Jury testimony to be disclosed without previous judicial sanction.

(3) Concluding, as a matter of Indiana statutory law, the provisions for secrecy of the grand jury were not for the benefit of taxpayer (petitioner) and hence he had no statutory right to have his motion to suppress sustained.

(4) Concluding there were no constitutional rights of petitioner involved in this proceeding. Hence, no constitutional ground existed for petitioner's motions to suppress evidence.

THE STATUTES INVOLVED.

The pertinent Indiana statutory provisions involved are as follows, to-wit:

Sec. 9-816—**Burns' Indiana Statutes:**

"Grand Jury—Secret Proceedings—Every member of the Grand Jury must keep secret whatever he or any other Grand Juror may have said, or in what manner he or any other Grand Juror may have voted on a matter before the Grand Jury."

Sec. 9-817—**Burns' Indiana Statutes:**

"Jurors as Court Witnesses—A member of the Grand Jury may, however, be required by any court to disclose the testimony of a witness examined before the Grand Jury, for the purpose of ascertaining whether it is consistent with that given by the witness before the court; or to disclose the testimony given before them by any person upon a charge against him for perjury in giving his testimony or upon his trial thereof."

Sec. 9-818—**Burns' Indiana Statutes:**

"Privilege of Jurors—A Grand Juror cannot be questioned for anything he may say or any vote he may give in the Grand Jury relative to a matter regularly pending before the Grand Jury, except for Perjury of which he may have been guilty in making an accusation or giving testimony to his fellow jurors."

CONSTITUTIONAL PROVISIONS INVOLVED.

United States Constitution, Amendment 4:

"**Unreasonable searches and seizures.**—The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

United States Constitution, Amendment 5:

"**Criminal actions—Provisions concerning—Due process of law and just compensation clauses.**—No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment by a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

United States Constitution, Amendment 14:

"1. **Citizenship—Due process of law—Equal protection.**—All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

CONCISE STATEMENT OF CASE CONTAINING FACTS MATERIAL TO THE CONSIDERATION OF THE QUESTIONS PRESENTED.

When Tax Court Cases Nos. 23,495 and 29,928 came on for hearing before the Tax Court, they were consolidated on petitioner's motion. Immediately thereafter, petitioner presented and filed identical motions to suppress evidence and requested a pre-trial hearing hereon which was by the Tax Court denied (R. 36 to 47) (R. 49 to 50; 53 to 58). An offer to prove the allegations contained in the verified motions to suppress was then made (R. 57 to 58).

In substance the motions alleged that the pending cases were based and founded upon and sprang directly from what they described as the illegal and unlawful disclosure and delivery by the Prosecuting Attorney of Vanderburgh County, Indiana, to the representatives of the Intelligence Unit of the Bureau of Internal Revenue of the United States Government, of a transcript of the testimony of witnesses who had appeared before the Vanderburgh County, Indiana, grand jury. The motions further allege that the charges contained in both cases were the direct result of hearings held before representatives of the United States government and that all of the testimony and information then before the government agents and in their sole and exclusive possession and control was the testimony of witnesses that had appeared before the Vanderburgh County, Indiana, grand jury, transcribed and delivered by the prosecuting attorney to the government agents, without previous judicial sanction.

The motions further charged, and an offer to prove was made, that everything learned by the government representatives concerning the alleged income tax liability of the taxpayer was learned illegally and unlawfully and in violation of the Fifth Amendment to the Constitution of

the United States and of the Due Process of Law provision of the Fourteenth Amendment, and that the prosecuting attorney turned the grand jury testimony over to the Bureau of Internal Revenue and thereby disclosed the secrets of the Grand Jury room without an order of any court and without judicial sanction.

The Court of Appeals for the Seventh Circuit found it unnecessary to decide whether the questions raised by the motions to suppress should have been determined in advance of the principal trial.

The Court of Appeals for the Seventh Circuit concluded, as a matter of Indiana statutory law, the provisions for secrecy of the grand jury were not for the benefit of petitioner and hence he had no statutory right to have his motions to suppress sustained.

Petitioner contended that his constitutional rights were invaded. He relied on cases involving unconstitutional searches and seizures by means of which sources of information and property were obtained and used against the person whose rights were invaded by such searches and seizures.

The Court of Appeals for the Seventh Circuit held that petitioner did not contend there was any search or seizure of any information or property belonging to taxpayer. Therefore, there were no constitutional rights of the petitioner involved in the proceeding and no constitutional ground existed for his motions to suppress.

In the Court of Appeals petitioner, in writing, submitted his case on the sole proposition that the Tax Court erred with respect to his motions to suppress evidence and that is the sole question before this Court.

REASONS FOR GRANTING WRIT.

I.

Petitioner's Verified Motions to Suppress Evidence Which Were Filed Contesting the Validity of the Use of Vanderburgh County, Indiana, Grand Jury Testimony Without First Procuring Judicial Sanction, Were for the Purpose of Consideration of the Court in Making Its Ruling, to Be Taken as True, Unless and Until Controverted Upon a Trial of the Issue Made by It. It Was Properly Before the Court by Virtue of Said Motions.

"It is the law that in obtaining and executing search warrants there must be strict compliance with whatever formalities are required by law. U. S. v. Borkowski (D. C., 1920), 268 Fed. 408. And it is equally firmly established that this right shall receive a liberal construction in its application to guarantee such right to the people. Gouled v. U. S. (1921), 255 U. S. 298, 65 L. ed. 647, 41 S. Ct. 261.

"If the seizure is illegal, for the reason that it was without warrant or by virtue of an improper warrant, any evidence gained thereby—whether it be the instruments used to commit the crime or oral evidence of what was found or seen in such unlawful search—is incompetent against the accused, and a conviction based thereon ought to be reversed. Boyd v. U. S. (1885), 116 U. S. 616, 6 Sup. Ct. 524, 29 L. ed. 746; Weeks v. U. S. (1914), 232 U. S. 383, 34 Sup. Ct. 341, 58 L. ed. 652, L. R. A. 1915 B 834, Ann. Cas. 1915 C 1177; Silverthorne Lumber Co. v. U. S. (1920), 251 U. S. 385, 40 Sup. Ct. 182, 64 L. ed. 319.

"* * * Appellant's motion which was offered for filing contesting the validity of the affidavit for the search war-

rant and the return thereon, was, for the purpose of consideration of the court in making its ruling, to be taken as true unless and until controverted upon a trial of the issue made by it. It was before the court by virtue of said motion." The above is from **Flum v. State** (1923), 193 Ind. 585, 141 N. E. 353. Petitioner contends that the foregoing statement of the law is applicable to the Grand Jury testimony received by the Intelligence Unit of the Internal Revenue Dept., U. S. Treasury (R. 36, 47).

For the reasons stated, the verified Motions to suppress evidence were properly before the Tax Court.

II.

Claims That the Illegality of Means Used by Government Agents in Obtaining Testimony Render It Inadmissible Against One Charged With Fraudulent Failure to Report Income Should, If Possible, Be Raised Prior to Trial.

It is necessary to examine the decided cases to first determine whether the prohibitions and consequent bar of the Fourth and Fifth Amendments operate as much in a civil case as in a criminal case. Petitioner contends they do. In **U. S. v. Wallace & Tiernan Co.**, 336 U. S. 794, 796, 93 L. ed. 1042, 1047, Mr. Justice Black stated in part, "This Court viewed the whole performance of the unlawful search and seizure of the Silverthorne books and papers as an 'outrage,' planned or at least ratified by the Government. Under these circumstances it was held that the Government was neither entitled to use the original documents nor any knowledge obtained from the originals, the photostats, or the copies. The rule announced was that evidence or knowledge 'gained by the Government's own wrong' is not merely forbidden to be used before the court but that it shall not be used at all! Other cases in this court have applied the same rule. It is an extraordi-

nary sanction, judicially imposed, to limit searches and seizures to those conducted in strict compliance with the commands of the Fourth Amendment." **Trupiano v. U. S.**, 334 U. S. 699, 705, 92 L. ed. 1663, 1669, 68 S. Ct. 1229; see also **McDonald v. U. S.**, 335 U. S. 451, 455, 456, 93 L. ed. 153, 154, 69 S. Ct. 191.

It is the settled rule in the federal courts that where a court is engaged in the trial of an action upon its merits, it will not take notice of the manner in which a witness has possessed himself of property which is material and properly offered in evidence, and if the defendant desires (and in this case the petitioner desired) evidence unlawfully seized returned to him or suppressed or both, a proper motion should be made before the trial of the case.

Where one party has illegally come into possession of secret grand jury testimony and proper motions have been filed to suppress the same, the issue as to whether or not violence has been done to the Fourth, Fifth or "Due Process" clause of the Fourteenth Amendment, should be determined in advance of the trial of the principal case. The following authorities support this contention: **U. S. v. Wallace & Tiernan Co.**, 336 U. S. 793, 93 L. ed. 1042, 69 S. Ct. 824; **Nardone v. U. S.** (1939), 308 U. S. 338, 84 L. ed. 307; **Weeks v. U. S.** (1914), 232 U. S. 383, 58 L. ed. 652, 34 S. Ct. 431, L. R. A. 1915 B, 834, Ann. Cas. 1917 C, 1177; **Goldstein v. U. S.** (1942), 316 U. S. 114, 86 L. ed. 1312; **Cornelius—Search and Seizure** (2nd ed.), Sec. 434; **Silverthorne Lumber Co. v. U. S.** (1920), 251 U. S. 385, 64 L. ed. 319, 40 S. Ct. 182, 24 A. L. R. 1426; **U. S. v. Wernecke** (C. C. A. 7, 1943), 138 F. (2) 561; **U. S. v. Frankfeld** (D. C. Md.), 100 F. Supp. 934; **Trupiano v. U. S.**, 334 U. S. 699, 92 L. ed. 1663, 6 S. Ct. 1229; **McDonald v. U. S.**, 335 U. S. 451, 93 L. ed. 154, 69 S. Ct. 191; **Flagg v. U. S.** (C. C. A. 2), 233 Fed. 481; **Roger v. U. S.** (C. C. A. 1), 97 F. (2) 691; **U. S. v. Krause**, 270 Fed. 578; **Gouled v. U. S.**, 225

U. S. 298, 65 L. ed. 647; **Agnello v. U. S.**, 269 U. S. 20, 70 L. ed. 145, 51 A. L. R. 409; **Re Jackson**, 96 U. S. 727, 24 L. ed. 877; **Amos v. U. S.**, 255 U. S. 313, 65 L. ed. 654; **U. S. v. Pillon** (1941), 36 F. Supp. 567; **U. S. v. Coplon** (2 C. A. 1950), 195 F. (2d) 629.

Petitioner made a timely and proper request for a pre-trial hearing on his verified motions to suppress evidence (R. 49 to 58). The trial court refused to permit a pre-trial hearing (R. 57, 58). Petitioner made a timely offer to prove, by oral testimony of Davis M. Shryer, W. D. Glenn and Manson Reichert, the allegations contained in the verified motions to suppress (R. 57). The trial court after hearing all the evidence in the trial (R. 59 to 187) then asked petitioner's counsel: "Before we close, do you propose to direct any testimony on matters set forth in the motion that you have filed to suppress evidence?" (R. 187.) Of course, it is obvious that evidence which had already been admitted by the court could not be suppressed. This could only be done by a pre-trial hearing on the motion, not after the harm and injury had been done. Such a procedure is similar to locking the barn door after the horse was stolen.

It is respectfully submitted that the Tax Court erred in refusing to hear evidence on petitioner's verified motions to suppress evidence prior to the trial. It is equally obvious that the Tax Court's overrruling of these motions (R. 255, 256) was erroneous, as the facts therein alleged were never controverted by respondent. The motions were filed and were properly before the court, the issues therein were not controverted and in view of the **Flum** case ruling (193 Ind. 585, 141 N. E. 353) such allegations of fact are to be taken as true. The facts therein alleged being accepted as true were sufficient to suppress all of the Government's evidence and the Tax Court erred in arbitrarily overruling the motions.

III.

Grand Jury Testimony Cannot Be Disclosed Unless by Previous Judicial Sanction.

It has long been the policy of the law in furtherance of justice that the investigations and deliberations of a grand jury should be conducted in secret, and that for most intents and purposes all of its proceedings should be sealed against divulgence. 24 **Am. Jur.** 865, Grand Jury, Sec. 47; Anno., 127 A. L. R. 273 (II); **State v. Fassett** (1844), 16 Conn. 457; **State v. Hamlin** (1879), 47 Conn. 95, 36 Am. R. 54; **Gitchell v. People** (1893), 146 Ill. 175, 37 Am. St. R. 147.

The State's Attorney, although not sworn to secrecy, is just as much bound to preserve the secrecy of the Grand Jury proceedings as are the Grand Jurors themselves. **State v. Kemp** (1939), 126 Conn. 60, 9 A. (2d) 63. In **U. S. v. American Medical Assn.** (D. C. D. C., 1939), 26 F. Supp. 429, the court held that expiration of the jury term will not operate to release the jurors from the oath of secrecy. **Atwell v. U. S.** (C. C. A. 4, 1908), 162 F. 97, 17 L. R. A. (N. S.) 1049, 15 Ann. Cas. 253.

Only after judicial sanction is obtained may a Grand Juror divulge matters learned in secrecy. **U. S. v. Kilpatrick** (D. C., 1883), 16 F. 765.

The Indiana rule forbids disclosure of Grand Jury testimony unless by judicial sanction. **Burdick v. Hunt** (1871), 43 Ind. 381; **Hinshaw v. State** (1897), 147 Ind. 334; **Burnham v. Hatfield (1838)**, 5 Blackfd. 21; **Shattuck v. State** (1859), 11 Ind. 473, and **State v. Van Buskirk** (1877), 59 Ind. 384.

The wisdom of permitting the Grand Jury testimony to be transcribed and to go into the possession of persons outside has been criticized by the courts. **U. S. v. Amazon,**

Ind., Chemical Corp. (D. C., 1931), 55 F. (2d) 254; **U. S. v. Providence Tribune Co.** (D. C., 1917), 241 F. 524; **U. S. v. Phil. & R. R. Co.** (D. C., 1915), 221 F. 683; **Goodman v. U. S.** (C. C. A. 9, 1939), 108 F. (2d) 516.

No one has a right to confidential Grand Jury testimony without previous judicial sanction. **Metzler v. U. S.** (9 Cir.), 64 F. (2d) 203; 4 **Bl. Com.** 126; 1 **Chitty Cr.**, L. 317.

The total disregard by the agents of the Intelligence Unit herein, of the requirement of judicial sanction before obtaining the Grand Jury evidence, amounted to a denial of the due process clause of the Fourteenth Amendment, **U. S. Constitution,** and "since due process is conceived to be the community's minimum standard of fairness, a denial of it is conduct that is shocking to the court's concept of the level of general morality." 1951 **Harvard Law Review,** No. 6, p. 1309.

It is well settled that claims that the illegality of means used by government agents in obtaining testimony render it inadmissible against one charged with crime should, if possible, be raised prior to trial. In fact, the courts have held in the "wire tapping" cases that it is an abuse of discretion not to have a pre-trial hearing. **Nardone v. U. S.** (1939), 308 U. S. 338, 84 L. ed. 307; **U. S. v. Pillon** (1941), 36 F. Supp. 567; **U. S. v. Coplon** (2 C. A., 1950), 195 F. (2d) 629; **Goldstein v. U. S.** (1942), 316 U. S. 114, 86 L. ed. 1312; **U. S. v. Frankfeld** (D. C. Md., 1951), 100 F. Supp. 934.

Petitioner cites the following additional authorities in support of his verified motion to suppress evidence. **Silverthorne Lumber Co. v. U. S.**, 251 U. S. 385, 64 L. ed. 319, 24 A. L. R. 1426; **Flagg v. U. S.** (C. C. A. 2), 233 F. 481; **Rogers v. U. S.** (C. C. A. 1), 97 F. (2d) 691; **Gouled v. U. S.**, 255 U. S. 298, 65 L. ed. 647; **Agnello v. U. S.** 269 U. S. 20, 70 L. ed. 145, 51 A. L. R. 409; **Re Jackson,** 96 U. S.

727, 24 L. ed. 877; **Amos v. U. S.**, 255 U. S. 313, 65 L. ed. 654.

The applicable Indiana Statutes are:

Sec. 9-816—**Burns' Indiana Statutes**, "Grand Jury—Secret Proceedings—Every member of the Grand Jury must keep secret whatever he or any other Grand Juror may have said, or in what manner he or any other Grand Juror may have voted on a matter before the Grand Jury."

Sec. 9-817—**Burns' Indiana Statutes**, "Jurors as Court Witnesses—A member of the Grand Jury may, however, be required by any court to disclose the testimony of a witness examined before the Grand Jury, for the purpose of ascertaining whether it is consistent with that given by the witness before the court; or to disclose the testimony given before them by any person upon a charge against him for perjury in giving his testimony or upon his trial thereof."

Sec. 9-818—**Burns' Indiana Statutes**, "Privilege of Jurors—A Grand Juror cannot be questioned for anything he may say or any vote he may give in the Grand Jury relative to a matter regularly pending before the Grand Jury, except for Perjury of which he may have been guilty in making an accusation or giving testimony to his fellow jurors."

The method used in obtaining the Grand Jury testimony herein was not in accord with either the State or Federal Statutes and Constitutions, and as to this phase of the docketed cases we conclude with a quote from the Illinois Law Review, Vol. 43, No. 4, Sept.-Oct., 1948, p. 459:

> "There is something socially harmful in a system of law which tolerates a violation of law on the part of those specifically charged with its enforcement."

CONCLUSION.

In conclusion, your petitioner respectfully prays that this Petition for a Writ of Certiorari be granted, that review of the case herein be made by this Honorable Court, and that the opinion, decision and judgment of the Court of Appeals for the Seventh Circuit be in all things reversed, and for such other relief in the premises as to this Honorable Court may seem fair and just.

Respectfully submitted,

WINFIELD K. DENTON,
WILBUR F. DASSEL,
Counsel for Petitioner.

APPENDIX A.

In the
UNITED STATES COURT OF APPEALS
For the Seventh Circuit.

October Term, 1953, April Session, 1954.

MANSON L. REICHERT,
Petitioner,
vs.
COMMISSIONER OF INTERNAL REVENUE,
Respondent.
No. 11000.

Petition for Review of Decisions of Tax Court of the United States.

June 9, 1954.

Before Major, Chief Judge, Duffy and Schnackenberg, Circuit Judges.

Schnackenberg, Circuit Judge. This case is brought to this court by the petition of taxpayer, Manson L. Reichert, asking for a review of decisions of the United States Tax Court entered June 18, 1953, and involves income taxes and fraud penalties assessed against him for the years 1943 through 1946. Jurisdiction was conferred on this court by Section 1141 (a) of the Internal Revenue Code, as amended June 25, 1948, and May 24, 1949 [26 U. S. C. A. 114 (a)]. By its orders the Tax Court determined deficiencies in income tax payments and fraud penalties amounting to $11,204.15.

Taxpayer became the chairman of the Republican County Central Committee of Vanderburgh County, In-

diana, in May, 1942, and in November, 1942, he was elected mayor of the city of Evansville. He held these positions in the taxable years 1943 through 1947. 1944 and 1946 were campaign years. One of taxpayer's duties as county chairman was to solicit campaign funds. In accordance with the method of operation of the Republican Party contracts were entered into between the Republican United Finance Committee of Indiana and the Republican County Central Committee of Vanderburgh County whereby funds collected by the county committee were to be remitted to the United Finance Committee, with a report of the names of the contributors. Receipts were issued to each contributor by the treasurer of the United Finance Committee. Of the total, 65% was to be returned to the county committee and 35% was to be allocated to the state committee. The Tax Court decided that a part of the contributions collected by taxpayer he did not remit to the state committee and he was therefore subject to an income tax thereon.

Taxpayer procured the appointment by the secretary of state of Benjamin H. Bartlett as manager of the motor vehicle license bureau branch office in Evansville. Bartlett agreed with taxpayer to put the latter's daughter, Maybelle, on his payroll at a salary of $3600 a year. She was placed on the payroll, did very little work, and the Tax Court found that what was paid to her, with the exception of $100 for each of the years 1943, 1944 and 1945, was paid to taxpayer for the assistance he had given in procuring Bartlett's appointment and was income to taxpayer.

The Tax Court also found that fraud had been proved.

When cases Nos. 23495 and 29928 came on for hearing before the Tax Court, they were consolidated for hearing on the motion of taxpayer's attorney, who thereupon immediately presented and filed written motions signed and

sworn to by taxpayer under date of October 29, 1951. The motions are identical and are referred to in the record and herein as the motion to suppress evidence.

In substance the motion alleged that the pending cases were based and founded upon and sprang directly from what it described as the illegal and unlawful disclosure and delivery by the prosecuting attorney of Vanderburgh County, Indiana, to the representatives of the Intelligence Unit of the Bureau of Internal Revenue of the United States Government, of a transcript of the testimony of witnesses who had appeared before the Vanderburgh County grand jury. The motion further alleges that the charges contained in both cases were the direct result of hearings held before representatives of the United States Government and that "all of the testimony and information then before said government agents and in their sole and exclusive possession and control was the testimony of witnesses that had appeared before the Vanderburgh County, Indiana, grand jury * * * transcribed * * * and delivered by * * * the prosecuting attorney * * * to the government agents" as aforesaid. The motion further sets forth several questions by special agent Shryer directed to taxpayer and another witness in which Shryer refers to testimony given by witnesses before the grand jury. Typical is the following question:

> "Mr. Reichert, in the proceedings of last year under state laws to obtain indictments against you, various individuals testified under oath before the Vanderburgh County Grand Jury, as to payment to you of sums of money. In May, '44, Benjamin H. Bartlett stated that just prior to the primary election that year he turned over to you the sum of $10,300. Did you receive that money?"

The motion charged that everything learned by the government representatives concerning the alleged in-

come tax liability of taxpayer was "learned illegally and unlawfully and in violation of the constitutional guarantees of said" taxpayer and, "specifically, in violation of the Fifth Amendment to the Constitution of the United States and of the Due Process of Law provision of the Fourteenth Amendment" thereto, and that the prosecuting attorney turned the grand jury testimony over to the Bureau of Internal Revenue and "thereby disclosed the secrets of the Grand Jury room without an order of any court and without judicial sanction, and that in so doing violence was done to the Fifth Amendment to the Constitution and the Due Process Clause of the Fourteenth Amendment."

The motion contained a prayer reading:

> "* * * prays that all evidence and properties of any kind or nature, including all of the testimony herein specifically set out and alleged, and testimony not herein set out and alleged, so learned by the agents of the Intelligence Unit, Bureau of Internal Revenue, Treasury Department of the United States, and any and all Grand Jury testimony of the Vanderburgh County, Indiana, Grand Jury, and all statements made by this affiant or by any other witness appearing before said agents, whether said statements be written or oral, may be quashed and suppressed, and that all property of whatsoever kind and nature, and documents, memoranda, books and all other property, and any statements, whether oral or written, already procured by said agents, be suppressed * * *."

Although no counter-affidavit or motion was presented by the government, taxpayer asked permission to introduce evidence to support the allegations of the motion and expressed a wish to do this before the case was tried on the merits. The court refused to permit this course of procedure to be followed and indicated that it would take the motion under advisement and rule on it when the evi-

dence was before it, suggesting that objection be made as the evidence of the government was offered. The trial proceeded, but taxpayer made no objections to evidence on the grounds set up in the motion to suppress. At the close of the trial the court asked taxpayer's counsel if he then proposed to offer evidence on the matter set forth in the motion. At that time taxpayer's counsel indicated that he was relying on the matter set forth in the motion only. It is contended by taxpayer in this court that the questions raised by the motion to suppress should have been determined in advance of the trial of the principal case. He relies upon Weeks v. United States, 232 U. S. 383, 58 L. ed. 652, and other cases. However that may be, we find it unnecessary to decide that question of practice.

1. Taxpayer relies upon the following provisions of the Indiana statutes (Burns' Indiana Statutes Annotated, chapter 9):

> 9-816. "Every member of the grand jury must keep secret whatever he or any other grand juror may have said, or in what manner he or any other grand juror may have voted on a matter before the grand jury."
>
> 9-817. "A member of the grand jury may, however, be required by any court to disclose the testimony of a witness examined before the grand jury, for the purpose of ascertaining whether it is consistent with that given by the witness before the court; or to disclose the testimony given before them by any person upon a charge against him for perjury in giving his testimony or upon his trial therefor."
>
> 9-818. "A grand juror can not be questioned for anything he may say or any vote he may give in the grand jury relative to a matter legally pending before the grand jury, except for perjury of which he may have been guilty in making an accusation or giving testimony to his fellow jurors."

In Schmidt v. United States, 115 F. 2d 394, at 396, the reasons for the oath of secrecy taken by grand jurors are stated by way of a quotation from United States v. Amazon Chemical Corp., 55 F. 2d 254, 261:

> "'(1) To prevent the escape of those whose indictment may be contemplated; (2) to insure the utmost freedom to the grand jury in its deliberations, and to prevent persons subject to indictment or their friends from importuning the grand jurors; (3) to prevent subornation of perjury or tampering with the witnesses who may testify before the grand jury and later appear at the trial of those indicted by it; (4) to encourage free and untrammeled disclosures by persons who have information with respect to the commission of crimes; (5) to protect the innocent accused who is exonerated from disclosure of the fact that he has been under investigation, and from the expense of standing trial where there was no probability of guilt. It is obvious that the basis of all but the last of these reasons for secrecy is protection of the grand jury itself, as the direct independent representative of the public as a whole, rather than of those brought before the grand jury.'"

To the same effect is Goodman v. United States, 108 F. 2d 516, at 519.

In Commonwealth v. Kirk, 17 A. 2d 195, 340 Pa. 346, it was said:

> "A consideration of the best authorities on the subject leads to the conclusion that the rule is for the protection of the Commonwealth, the grand jurors themselves and the witnesses, and is not concerned with 'protecting' the accused, whose constitutional and statutory rights are not affected by it one way or the other."

To the same effect is State v. Krause, 50 N. W. 2d 439, at 444, 260 Wis. 313. In that case decisions of the Indiana courts are referred to, as follows:

> "In State v. Bates, 1897, 148 Ind. 610, 48 N. E. 2, 3, the court in its decision stated: 'Though obviously proper, and highly important, that the proceedings of a grand jury should be in secret, one who is indicted cannot take any advantage of it if they are not. Shattuck v. State, 11 Ind. 473. The secrecy is not required for his benefit, but otherwise.' "

The court in State v. Krause also cited State v. Rothrock, 200 P. 525, 45 Nev. 214, quoting therefrom, as follows:

> " 'The reasons on which the sanction of secrecy which the common law gives to proceedings before grand juries is founded are said in the books to be threefold. One is that the utmost freedom of disclosures of alleged crimes and offenses by prosecutors may be secured. A second is that perjury and subornation of perjury may be prevented by withholding the knowledge of facts testified to before the grand jury, which, if known, it would be for the interest of the accused or their confederates to attempt to disprove by procuring false testimony. The third is to conceal the fact that an indictment is found against a party, in order to avoid the danger that he may escape and elude arrest upon it, before the presentment is made. * * * But when these purposes are accomplished, the necessity and expediency of retaining the seal of secrecy are at an end. "Cessante ratione, cessat regula." ' "

Inasmuch as the motion to suppress reveals that the grand jury inquiry now under discussion occurred in 1947, which was the year prior to the year in which the income tax liability hearings were held, and there is no allegation

that the said grand jury had not been discharged, one might reasonably conclude that the need for secrecy as to proceedings before that grand jury had ceased before the hearing in question.

United States v. Coplon, 185 F. 2d 629, is distinguishable from the case at bar because in the Coplon case evidence against the defendant was obtained by tapping her telephone wires and a statutory provision (47 U. S. C. A. 605) was held to forbid the introduction of evidence obtained through information gained by such unauthorized wire tapping.

We conclude that, as a matter of Indiana statutory law, the provisions for secrecy of the grand jury were not for the benefit of taxpayer and hence he had no statutory right to have his motion to suppress sustained.

2. But the taxpayer contends that his constitutional rights were invaded. He relies on cases involving unconstitutional searches and seizures by means of which sources of information and property were obtained and used against the person whose rights were invaded by such searches and seizures.

Such cases are: Boyd v. United States, 116 U. S. 616, 29 L. ed. 746, which involved a statute which attempted to require an involuntary production of a party's private books and papers to be used against him or his property in a criminal or penal proceeding, or for a forfeiture; Weeks v. United States, 232 U. S. 383, 58 L. ed. 652, pertaining to a seizure of an accused's letters and private documents in his house in his absence by a United States marshal holding no warrant for his arrest and no search warrant; Silverthorne Lumber Company v. United States, 251 U. S. 385, 64 L. ed. 319, which had to do with knowledge gained by the federal government's own wrong in obtaining papers by means of unlawful searches and seizures; Trupiano v. United States, 334 U. S. 699, 92 L. ed.

1663, 1669, relating to an illegal seizure of property by government agents, without a search warrant; and McDonald v. United States, 335 U. S. 451, 455, 93 L. ed. 153, 154, in which there was search and seizure of articles in the possession of the defendant in violation of the Fourth Amendment to the United States Constitution.[1]

In the case at bar there is no contention that there was any search or seizure of any information or property belonging to taxpayer. That being so, there are no constitutional rights of taxpayer involved in this proceeding. Hence, no constitutional ground existed for his motion to suppress evidence.

In this court petitioner taxpayer in writing submitted his case on the sole proposition that the Tax Court erred with respect to his motions to suppress evidence. Therefore what we have hereinbefore said entirely disposes of this case and the decisions of the Tax Court will be affirmed.

Affirmed.

A true copy:

Teste:

/s/ Kenneth J. Carrick,
Clerk of the United States Court of Appeals for the Seventh Circuit.

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[1] Goldstein v. United States, 316 U. S. 114, 86 L. ed. 1312, cited by taxpayer, is not pertinent. It involved 47 U. S. C. A. 605, excluding as evidence information resulting from certain types of interception of messages, it having been previously held in Olmstead v. United States, 277 U. S. 438, that such unlawful interception does not amount to a search or seizure prohibited by the Fourth Amendment.

APPENDIX B.

19 T. C. No. 116

THE TAX COURT OF THE UNITED STATES

MANSON L. REICHERT, Petitioner, v. COMMISSIONER OF INTERNAL REVENUE, Respondent.

Docket Nos. 23,495, 29,928. Promulgated March 10, 1953.

1. In May, 1942, petitioner became the chairman of a party county central committee, and in November, 1942, was elected mayor. He held these positions through the taxable years 1943, 1944, 1945 and 1946. As such chairman he supervised the solicitations in the county for campaign funds for the benefit of the party in the various elections. As such chairman, he procured the appointment of a close political friend as manager of the local branch of the state motor vehicle license bureau, and who, after taking the office, placed petitioner's daughter on the bureau manager's payroll. **Held,** on the facts, that the compensation paid as salary during the taxable years in the name of the daughter of petitioner, except as to a small amount, was income to petitioner.

2. At the instigation of petitioner, contributions were solicited in 1944 and 1946 from tavern-keepers and "bookies." The amounts collected were delivered to petitioner and by him turned over to the committee sub-treasurer. The 1944 collections, after being changed into one dollar bills, were distributed at election time to precinct committeemen and party workers. It was decided that the sub-treasurer should hold the 1946 collections for use at general election time in the fall. **Held,** that the contributions so received and dispensed were not income to petitioner.

3. In 1945 and 1946, and under the guise of political contributions, petitioner received payments from a stockholder of a wholesale liquor company for the use of his influence in procuring the renewal of the company's liquor license. **Held**, that the amounts so received were income to petitioner.

4. In 1944 petitioner received payments from two other individuals which were not accounted for by him through established party channels as political contributions. The respondent determined that these amounts were income to petitioner. Petitioner denied the receipt of any amounts as contributions or otherwise from the individuals in question. For lack of proof by petitioner, respondent's determination as to these amounts is sustained.

5. The facts show that part of the deficiency for each of the taxable years is due to fraud with intent to evade tax.

Wilbur F. Dassel, Esq., and William T. Boden, C. P. A., for the petitioner.

Elmer E. Lyon, Esq., for the respondent.

Respondent determined deficiencies in income tax and additions to tax for fraud under section 293 (b) of the Internal Revenue Code against petitioner, as follows:

Year	Deficiency	Addition to tax
1943	$ 2,461.67	$1,230.84
1944	18,434.24	9,217.12
1945	3,294.26	1,647.13
1946	4,348.07	2,174.04

Certain of the issues raised as to 1943 have been conceded by the respondent. The issues remaining for decision are whether an item of $3,600 was the income of peti-

tioner or that of his daughter; if there is a deficiency, whether any part thereof was due to fraud with intent to evade tax; and whether the assessment of such deficiency for 1943 is barred by the statute of limitations.

The same question as to the $3,600 item above is also in issue for 1944, 1945 and 1946. Also presented for decision are the questions whether petitioner received income in those years from payoffs and the like under the guise of political contributions and whether the deficiencies, if any, were due, in whole or in part, to fraud.

Findings of Fact.

Petitioner is an individual and resides in Evansville, Indiana. He filed his income tax returns for the years involved with the collector of internal revenue for the district of Indiana.

Prior to the tax years herein, petitioner had been in the business of farming and street repairing. He had participated in Republican party politics in Evansville and in Vanderburgh County for some time. He was one of the county committeemen elected in the May, 1942, Republican primary and shortly thereafter, at the organization of the Republican County Central Committee of Vanderburgh County, he was elected or appointed chairman. At the same time a vice chairman, secretary and treasurer were elected or appointed by the committee. Clarence Maasberg, a teller at the Old National Bank, was treasurer of the committee from 1942 through 1946. Petitioner held the chairmanship of the county committee until May 29, 1948. He was elected mayor of Evansville on November 3, 1942, took the oath of office on January 1, 1943, and served as mayor until December 31, 1947.

Part of petitioner's duties as chairman of the County Central Committee was to supervise the solicitation of

funds and contributions for the aid of the party, particularly, in the general election campaigns. The state organization of the Republican Party provided a method for the solicitation of funds for local, state and other political campaigns in order to avoid the overlapping of such campaigns. At its state headquarters, the party had a committee known as the Republican United Finance Committee through which it conducted its campaigns for finances. This committee would enter into contracts for the conduct of those campaigns with district or county central committees.

For the campaigns in 1944 and 1946, the Republican United Finance Committee of Indiana had agreements with the Republican County Central Committee of Vanderburgh County covering and governing the campaigns for funds. For 1946 the period of the contract was from September 1, 1946, through December 31, 1946. The purpose of the campaigns was to obtain funds for the support of the various committees of the Republican Party. The agreement provided, inter alia, that 65 per cent of the proceeds from the campaign in Vanderburgh County was to be returned to the county committee and 35 per cent was to be allocated to the state committee; that all remittances were to be made to the Republican United Finance Committee, with pledge cards and/or transmittal sheets, as rapidly as possible and that that committee would then return to the county committee 65 per cent of the remittances as soon as they were cleared with the treasurer of the state committee; that the treasurer of the Republican United Finance Committee would issue an official receipt to each contributor and that all solicitations by or for the party in Vanderburgh County during the designated period should be through the Republican United Finance Committee of Indiana, Vanderburgh County Division, and under the terms of the agreement. The agreement was signed on behalf of the state party organization by the

chairman of the Republican United Finance Committee, the treasurer of the Indiana Republican United Finance Committee, and the Chairman of the Indiana Republican State Central Committee and on behalf of the Republican County Central Committee of Vanderburgh County by petitioner, as chairman.

As a result of the 1946 party finance campaign in Vanderburgh County, $26,955 was remitted to the Republican United Finance Committee and $16,221.04 was returned to the county committee. In 1944, $44,717.80 was sent in by the Vanderburgh county committee and the state committee returned $28,811.78. The treasurer of the county committee made a report to the treasurer of the state committee, covering the respective elections, the amounts contributed and the names and addresses of the contributors. It was permissible to send in "groups of contributions from other people." As to Vanderburgh County, the lists purported to be a full and complete list of all contributors in that county. 1945 was an off-year for elections and no contributions were solicited through the state committee. Had any contributions been made, however, they should have been remitted to the state committee's treasurer. No contributions were transmitted to the state committee in 1945 from Vanderburgh County.

The Republican United Finance Committee, through its treasurer, kept individual index cards which showed the names of the contributors, the amounts of their contributions and the year in which the contributions were made. Official receipts were mailed from the state committee to each contributor. The names of the solicitors were not kept in the state committee's records.

Petitioner appointed his brother-in-law, Julius Ritter, as sub-treasurer of the Republican County Central Committee. Under the Corrupt Practices Act of Indiana, the authority to appoint a sub-treasurer is in the committee treas-

urer, who, under his bond, is responsible for the acts of the sub-treasurer. The Act also provides that all funds or contributions collected or received by the sub-treasurer must be turned over to the treasurer. Ritter also served under petitioner as comptroller for the City of Evansville. As comptroller he occupied an office near that occupied by petitioner as mayor.

For some time petitioner had been associated in party politics in Evansville and Vanderburgh County with Benjamin H. Bartlett. Bartlett was employed by a brewery and was known as a "beer spender," due to the fact that at various times in the taverns of the area he would treat the tavern customers to the product of his employer. He became a close personal friend of petitioner, politically and socially. He was petitioner's right-hand man in politics, and the friendship of Bartlett and petitioner was well known. After petitioner was elected mayor of Evansville, in November, 1942, petitioner and Bartlett discussed the appointment of Bartlett as manager of the Motor Vehicle License Bureau, located in Evansville.

The State of Indiana sold and issued motor vehicle license plates, certificates of title and transfers thereof, driver's licenses and renewals through branch offices in the respective counties. The managers of the branches were appointed by the Secretary of State, usually on the recommendations of the respective county central committee chairmen. It was understood that the individual recommended by petitioner for that position in Vanderburgh County would automatically be appointed.

The salary of the mayor of Evansville was then $5,200 a year and petitioner thought it would be unfair for Bartlett to be paid more money than the mayor. Bartlett ascertained from some former managers of the bureau that the position paid $10,000 or more a year. Such compensation

and costs of operation of the office were derived from fees charged for services rendered or added to the cost of licenses issued.

Bartlett agreed that he and petitioner should receive comparable annual compensation, and was willing to share part of the manager's income with petitioner, but did not wish to pay the income tax on the portion petitioner was to receive. They concluded that Bartlett should put petitioner's daughter, Maybelle, on the payroll at a salary of $3,600 a year. Bartlett received the appointment, took charge of the office in December, 1943, and put petitioner's daughter on his payroll at the salary of $3,600 a year, which compensation began on January 1, 1943. Bartlett retained his position with the brewery and did not spend much time at the automobile license office.

Maybelle, in December, 1942, was engaged to be married. Her fiance, Don Davis, had entered the Navy in September, 1942. They were married in February, 1943. She continued to live at the home of her parents. She received the usual government allotment during her husband's period in the service.

The Motor Vehicle License Bureau had a rush season from January 1 to March 31, as motor vehicle owners were required to buy their licenses by the latter date. Maybelle did very little work. During the rush period she went to the office from time to time, but was seldom there before 10:00 A. M. She did not know what the office hours were or that the office was open Saturday mornings. Many days she did not report at all. After the rush season there was a normal flow of business and there were sometimes weeks when she did not go to the office. The office hours for the other employees were from 8:00 A. M. to 5:00 P. M., five days a week, and from 8:00 A. M. to 12:00 noon on Saturdays. Other girls were paid from $30 to $35 a week for

doing the kind of work Maybelle was supposed to do. The woman in charge of the office was paid $50 a week. Maybelle considered and treated her appointment in the Motor Vehicle License Bureau as a "snap" job and made appearances at various times for the purpose of giving color to her employment.

Maybelle's business experience was limited. She graduated from high school in 1936 and had taken a course in typing there. She attended college until her junior year, when she became engaged to marry, and thereupon, in 1939, left college. She had not taken any business course and did not know shorthand. Prior to her alleged employment by Bartlett her business experience consisted of working as a sales clerk for a jewelry store on two separate "Dollar Days" or bargain sales days and helping in the local Republican headquarters during several election campaigns, and then she worked only as she wished or when she was available, and seldom received any compensation for her services.

Maybelle kept no checking account, although in 1944 she had a small savings account, to which she added nothing in later years. During the years in question her father prepared her income tax returns.

Bartlett delivered some of the checks made out to Maybelle to petitioner and some to Maybelle. He made out and signed most of them. Except for the first two checks issued for January and February, 1943, in the amounts of $300 each, there was a withholding from all salary checks for Federal income tax. Bartlett paid the employees' social security taxes. In July or early August, 1946, Bartlett took approximately $1,377.50 in cash to petitioner to cover the five-month period between July 1 and December 1, 1946. This amount represented $1,500, less withholding tax.

Maybelle gave birth to a baby in May, 1946. She did not report to the office at any time during 1946.

Of the payments made by Bartlett as "salary to Maybelle," $100 in each of the years 1943, 1944 and 1945 was paid to Maybelle for services rendered. She did no work and earned no compensation at the Motor Vehicle Bureau in 1946. The remainder of the payments for 1943, 1944 and 1945 and all of the payments in 1946, though under the guise of salary to Maybelle, were paid to petitioner or his nominee for the assistance he had given in procuring Bartlett's appointment.

Bartlett, in his income tax returns, claimed deductions for the money paid out as salary in Maybelle's name. These deductions were eventually disallowed by respondent and Bartlett paid income tax on them.

During petitioner's administration as mayor in the years 1944, 1945 and 1946, there were from thirty-five to forty "bookies" in Evansville. Bartlett knew who they were and where they operated.

Prior to the May primary in 1944, Bartlett was instructed by petitioner to raise some money. He usually solicited the tavern-keepers and the "bookies," and was assisted by a George Coogan and a Gilbert Minton, the latter controlling the news service which gave information to the "bookies." Approximately $10,300 was obtained from the tavern-keepers and "bookies" in the 1944 spring solicitations. Bartlett took the money to petitioner at his office in the city hall, who in turn gave the money to Ritter, as custodian. Ritter was to obtain one dollar bills which were to be disbursed among precinct committeemen and workers on the night before the election and on election day. According to that plan and during the evening before the primary, petitioner, Bartlett and Ritter, with Joe Bastion and Harold Ziss assisting passed out about $6,000 at the mayor's office, and on election day petitioner and

Bartlett personally delivered in the various precincts more cash to those who had used the money received the night before.

Bartlett, with the assistance of Gilbert Minton and Clarence Coogan, now deceased, and who was the brother of George Coogan, solicited the tavern-keepers and "bookies" again in the fall of 1944, just prior to the general election, and obtained about $18,600 in cash, which was delivered to petitioner, at his office, by Bartlett and Coogan. Petitioner turned the money over to Ritter and requested him to get some one dollar bills. Ritter, through Herman J. Volke, a vice president of the Old National Bank, exchanged large denomination bills for 20,000 old one dollar bills, in November, 1944. One dollar bills were distributed to various individuals on the night before the general election by Bartlett and others at the McCurdy Hotel, which money was to be used in various precincts.

In the spring of 1946 petitioner told Bartlett to get some money before the primary, and Bartlett and Clarence Coogan solicited the tavern-keepers and "bookies," obtaining about $6,800 in cash. Coogan and Bartlett took the money to the mayor's office and delivered it to petitioner, in the presence of Harold Ziss and Julius Ritter. Petitioner gave the money to Ritter to put in the safe in the comptroller's office. In the discussion of what should be done with the money, it was concluded that it should be held until the general election, as there was not much opposition in the primary.

Jesse George Patterson, a tavern operator since 1939, made a contribution of $500 cash to petitioner in the spring of 1944 and gave petitioner another contribution in the fall, in the amount of $1,000. Both contributions were turned over to petitioner at his office, the first being made in the presence of Clarence Coogan and Bartlett, and the latter in the presence of Bartlett. In each instance, peti-

tioner took the money, thanked Patterson, and put the money in his pocket. Bartlett and Patterson had been friends for a long time.

Albert A. Bradford, a retail lumber dealer, and who did some real estate business, made a contribution of $75 cash in 1944 to petitioner.

Petitioner passed on all applications for renewal of wholesale liquor distributors' licenses in Vanderburgh County, and made recommendations to the State Republican organization which in turn usually passed the recommendations on to the Indiana Alcoholic Beverage Control Commission, and in accordance with the practice at that time, the commission renewed the licenses as recommended.

One of such liquor distributors in Evansville was the Conard Company, a corporation. In 1945, from the time that had elapsed since application for renewal had been made, it appeared that the company's license might not be renewed by the commission. An officer and stockholder of the company, Alvin R. Brown, requested petitioner to assist him in procuring a renewal of the company's wholesale liquor license and offered to give petitioner a $3,000 contribution if a renewal of the license could be obtained. Petitioner indicated that that was not enough, whereupon Brown and petitioner concluded that $5,000 would do. After petitioner had the matter under consideration a few weeks, Brown contacted petitioner again, and in June, 1945, gave petitioner $5,000 cash in one hundred dollar bills. The money was delivered to petitioner at the mayor's office. Petitioner placed the money in a drawer in his desk. Shortly thereafter, petitioner addressed a letter to the Alcohol Beverage Control Commission, over his signature, recommending the renewal of the Conrad Company's license. Petitioner gave the letter to Brown and it was later presented to the commission in Indianapolis by one of the officer-stockholders of Conrad Company. The commission issued the company its license.

Brown gave a contribution of $400 to the campaign fund in 1946 and was told that was not enough. The three stockholders of the Conrad Company, through Brown, then gave petitioner $1,100 in cash at his mayor's office. No receipts for any of the three contributions were given by petitioner to Brown.

Brown had been in the liquor business in Evansville since 1934. He favored the Republican Party before prohibition. After repeal, he leaned toward the Democratic Party because it had put him back in business.

The treasurer of the Republican United Finance Committee of Indiana was also the treasurer of the State Republican Committee of Indiana. In neither organization did the records show any contributions from Bartlett for 1944 or 1946; they showed no contributions from Jesse Patterson for 1944 or 1946, and none from Alvin R. Brown for 1945 or 1946. The records of the United Finance Committee showed that A. A. Bradford contributed $50 on November 3, 1944, but no contributions for 1946. His records also showed contributions from petitioner on November 2, 1944, in the amount of $2,500; on October 21, 1946, $1,500; on October 29, 1946, $500; and, on November 1, 1946, $1,000. Julius Ritter was shown to have contributed $500 on November 2, 1944, $200 on October 21, 1946, and $100 on November 1, 1946.

Petitioner, in his income tax returns for 1943 to 1946, inclusive, reported net income as follows: 1943, $6,208.52; 1944, $3,602.78; 1945, $6,283.91; and 1946, $7,684.51.

In return for political favors rendered by him, the petitioner received the following amounts which he did not report in his income tax returns:

1943	From Benjamin H. Bartlett	$3,500
1944	From Benjamin H. Bartlett	3,500
1945	From Benjamin H. Bartlett	3,500
	From Alvin R. Brown	5,000
1946	From Benjamin H. Bartlett	3,300
	From Alvin R. Brown	1,100

A part of the deficiency for each of the taxable years is due to fraud with intent to evade tax.

Opinion.

Turner, Judge: The respondent has determined that the petitioner received additional income from specific sources, and contends that such income was either a "payoff" for political favors rendered or the "sale of political influence." The burden of proving respondent erred in determining the deficiencies is on the petitioner.

In the main, the issues here involve transactions of which no record was made. In some instances, as in the case of the Republican United Finance Committee, reference is made to records and documents for the purpose of showing the absence of entries which should have been found, if some of the testimony given is to be believed. In numerous instances there were direct conflicts and contradictions in testimony herein and all of it cannot represent the truth. We have seen and heard the witnesses and, after hearing their testimony and on the basis of the impressions received of those witnesses at the trial, we have re-examined such testimony as it appears of record, and in our findings have arrived at what we regard as the facts in the various situations.

For the purposes of our discussion of the income items, the issues may be divided into two parts, one having to do with the purported employment of petitioner's daughter

Maybelle by Benjamin H. Bartlett, and the other having to do with amounts received by petitioner under the guise of political contributions but which, according to respondent's determination, were received by petitioner as political "payoffs" or in the sale of political influence.

The question whether the petitioner is taxable on payments made by Bartlett under the guise of salary to Maybelle and, if so, to what extent he is taxable, is common to all the years before us. The respondent has determined that the full amounts of $3,600 for each of the years 1943, 1944 and 1945, and of $3,300 for the year 1946, were payments to petitioner and constituted income to him. While the record is not very clear on the point, it appears that Bartlett's tenure as manager of the motor vehicle branch at Evansville terminated on December 1, 1946, and if so, that accounts for the fact that the payments for 1946 were only $3,300, instead of $3,600, as in each of the first three years.

While petitioner and Bartlett, who was called as a witness by the respondent, did contradict each other in much of their testimony, they were in agreement on the following matters: They had worked together in politics and had been close political and social friends; that petitioner was appointed chairman of the Republican County Central Committee of Vanderburgh County in May, 1942, and served as such through the period herein; that Bartlett had helped petitioner to be elected mayor of Evansville in 1942; that as chairman of the County Central Committee petitioner could, in effect, name the manager of the local Motor Vehicle License Branch; that petitioner had Bartlett appointed to that position; that petitioner's daughter Maybelle was placed on Bartlett's payroll at a salary of $3,600 a year for all but one month of Bartlett's tenure; that some checks issued in Maybelle's name were delivered by Bartlett to petitioner; and that Bartlett paid to petitioner in July or August, 1946, cash, less withholding tax, represent-

ing the last five months of Bartlett's last year as manager of the bureau, which payment was for services Maybelle had not rendered.

Admitting that he had Bartlett appointed manager of the local branch, it was petitioner's testimony that Bartlett had asked for the position and he gave it to him because Bartlett had worked in the organization when petitioner was elected mayor. As to the placing of his daughter on Bartlett's payroll, his only explanation or justification seems to be that it was Bartlett's idea and suggestion. We are convinced, however, that it was understood that Maybelle was to do little, if any, work and that her name was placed on the payroll to cover the payments Bartlett was to make to petitioner and that Bartlett was telling the truth when he testified that his interest in putting Maybelle on the payroll was so that he would have a basis for claiming deduction of the payments in reporting his income tax, whereas payments to petitioner of the amounts in question, without some such arrangement, would not.

Maybelle had never really been employed prior to this so-called employment, she was inexperienced in the type of work to be done, and she was planning to be married within the immediate future, her marriage taking place in February after she had purportedly gone to work in January. Presumably, it had not been necessary for her to work, since her father was a man of some means. She acknowledged that she considered the position as a "snap," that she was inexperienced, and that under the arrangement she could go to work when she pleased. And yet, she also testified that Bartlett was in desperate need for help and prevailed upon her to take the position. Most of the work she did was in the "rush season" between January 1 and March 31, but when she did report to work, it was not before 10:00 A. M. Had she considered herself a regular employee, she would, in reason, have expected to work as such, and certainly would have

known what the office hours were and that a week's work was five and one-half days, instead of five days. Nor would she have been paid a salary that was not only more than was paid other girls doing comparable work, but was in excess of the compensation received by Bartlett's experienced office manager.

As to the recipient of the final payment of Maybelle's so-called salary, there is a pointed contradiction in Maybelle's testimony and that of petitioner. Petitioner and Bartlett testified that Bartlett took the salary for the last five months of 1946 in cash, less withholding tax, to petitioner at his office, while Maybelle was positive in her testimony that the cash was delivered to her in person by Bartlett at her home. Maybelle had not been present in the courtroom when her father testified, but had heard Bartlett's testimony. It is of little consequence, however, whether petitioner or his daughter received the allotted salary payments from Bartlett. The arrangement was for petitioner to share with Bartlett some of the income Bartlett was to receive as manager of the bureau. Except to the extent hereafter stated, the payments pursuant thereto, whether to petitioner or Maybelle, were petitioner's. If petitioner chose to let all the money go to his daughter, he would be no less taxable on it, and that would be true whether or not she knew of the arrangement between her father and Bartlett. We are convinced that Bartlett would not have received the appointment otherwise and that the salary arrangement was a subterfuge to hide the true facts. We do think that Maybelle did actually do a limited amount of work at the office during the first three months of 1943, 1944 and 1945, and she may have done some few jobs at her home, and to the extent of work so done, the payments received by her as salary were her income. Applying the rule laid down in **Cohan v. Commissioner**, 39 F. 2d 540, we have carefully examined the evidence of record and bearing heavily

against petitioner for failure to bear his burden of proof, we have concluded and found as a fact that Maybelle earned on work done for Bartlett $100 in each of the years 1943, 1944 and 1945. The remainder of the amounts paid in those years under the guise of salary to Maybelle was the income of petitioner. In 1946, the evidence fails to show that Maybelle did any work and the entire $3,300 paid in that year under the guise of salary to her was petitioner's income.

The remaining issues as to the receipt of income not reported raise the question of whether or not certain amounts brought in by Bartlett, Alvin R. Brown, Jesse Patterson and Albert A. Bradford were received by petitioner as his own, in return for political favors, but under the guise of political contributions.

Petitioner in his testimony categorically denied that he received any payments such as those involved herein, as political contributions or otherwise, from the individuals named, and further, that all contributions which he did receive were transmitted, along with the names of the contributors, to the Republican United Finance Committee, as required by the contract and agreement between that committee and the Republican Central Committee for Vanderburgh County. As to his receipt of money from individuals named, his testimony and theirs are in direct contradiction. Each of them testified that he did deliver the money in question to petitioner, and after seeing and hearing them on the witness stand, and giving careful consideration to their testimony, we believe they were telling the truth.

As to the amounts received by petitioner from Bartlett as contributions from tavern-keepers and "bookies," in 1944 and 1946, we do not believe that petitioner received such funds as his own. While they were delivered to petitioner, in his office, we think that the true picture was

that they were received by him as campaign contributions for use in Evansville and that they were used, as indicated by the testimony of witnesses, as "payoffs" to precinct committeemen and precinct workers. In each instance the money was not retained by petitioner, but was immediately turned over to Julius Ritter, who served under the designation of sub-treasurer of the county committee, and with respect to money brought in in 1944, Ritter, in turn, on the eve of the elections, had the currency received changed into one dollar bills and in that form the money was distributed, the major portions being distributed on the eves of the elections, in one instance, from the mayor's office, and in the other from a room in a local hotel. The remainder was dispensed on election day in the precincts themselves. When the $6,800 was brought in in the spring of 1946, it was concluded that Ritter should hold the money for use in the general election, since there was not much opposition in the primary. While it may be true that the manner of soliciting the funds in question and the method in which they were used were in conflict with the contract between the county committee and the Republican United Finance Committee and in violation of the Corrupt Practices Act of Indiana, the enforcement of that contract and the Indiana Corrupt Practices Act is not within our province. The funds in question were not delivered to petitioner, received by him as his own, or appropriated to his own uses. To the contrary, they were received by him to be used for political campaign purposes and they were so used or turned over to Ritter for such use at a later election. They did not become the gross income of the petitioner.

As to the amounts paid to petitioner by Alvin R. Brown, the facts are different, and we have so found. The first contribution was $5,000 in 1945. Brown's company was in the wholesale liquor business. When the company's license was up for renewal, the renewal was not granted

in ordinary course, and word was passed on to Brown that a "contribution" would probably serve to eliminate the difficulty. Brown saw petitioner and offered $3,000, but was told that amount was not adequate. A $5,000 payment was finally agreed upon and paid. No part of this amount was ever reported to the state organization. It is our opinion, and we have concluded, that it was not paid as a political party contribution and that it was not so intended, but that petitioner received it as recompense for removing the obstacles from the renewal of the license. The payment was made in 1945, which was not an election year. Brown and his associates made another "contribution" in 1946. That amount was not reported by petitioner to the state headquarters, and he denied that he received it. We have concluded that the character of this payment was the same as that made in the prior year.

As to the payments by Jesse Patterson and Albert A. Bradford, the record is not so clear. Patterson was a tavern-keeper. He was a Republican, and his testimony was that he paid $500 in cash to petitioner in the spring of 1944 and made another payment of $1,000 in the fall, as contributions to the campaign fund. In each instance, petitioner took the money and, thanking Patterson, put the money in his pocket. With that testimony, the record of the $1,500 ends. The petitioner categorically denied that he ever received any amounts from Patterson, although Patterson had testified that the payments were made in petitioner's office, the first in the presence of Clarence Coogan and Bartlett and the second in the presence of Bartlett. Neither of these "contributions" were reported by petitioner to the state organization, and since petitioner denied receipt of the moneys, in the first instance, there is no basis for any conclusion that he turned the money over to Ritter, or anyone else, for use in the campaign, as was true of the funds solicited and brought in by Bartlett. For failure of proof, the respondent is

sustained in his inclusion of the $1,500 paid by Patterson to petitioner as petitioner's income. Similarly, the respondent's determination is sustained, for lack of proof, with respect to $25 of the $75 contributed by Albert A. Bradford. The picture there is substantially comparable to that in the case of the money paid over by Patterson. Petitioner denied that he received any amount, although a contribution of $50 from Bradford was later reported to the state organization. For failure of proof, the respondent is sustained to the extent of the $25, which petitioner received but did not transmit to the state organization.

On the fraud issue, it is our conclusion that the respondent has amply met his burden of proof. We are convinced, and our findings indicate that petitioner well knew that the payments by Bartlett under the guise of salary to Maybelle were being made in return for petitioner's influence in obtaining Bartlett's appointment as director of the automobile license bureau for Vanderburgh County. We are also convinced that petitioner was well aware of the income tax implications and that his idea was comparable to that of Bartlett, namely, that by putting Maybelle on Bartlett's payroll the arrangement would have an outward appearance of respectability and that he would receive and retain such portions of the moneys as pleased him, without the income tax consequences. He also well knew and understood that little, if any services were to be expected of his daughter. Part of the deficiency in each of the years before us was due to fraud on the part of petitioner with intent to evade tax.

Having concluded that there was fraud in each of the years in question, the decision is also for the respondent on the statute of limitations issue with respect to 1943.

Decisions will be entered under Rule 50.

APPENDIX C.

Decision—No. 23,495.

THE TAX COURT OF THE UNITED STATES.

(Caption—23,495.)

Decision.

On March 10, 1953, the Findings of Fact and Opinion of this Court in the above-entitled proceeding were promulgated. Conflicting computations of deficiency were thereafter filed by the parties. The difference between the parties is whether, in the computation of the deficiency herein, the credit prescribed by Section 35 of the Internal Revenue Code is to be taken into account. The statute, Section 271 (b) of the Internal Revenue Code, specifically provides that the computation is to be made "without regard to the credit under section 35." See Paul Irvin Redcay, 12 T. C. 807.

After due and careful consideration of the computations and the arguments of the parties, it is

Ordered and Decided: That there is a deficiency in income tax for the year 1943 in the amount of $1,115.54 and an addition to tax for fraud in the amount of $557.77 for such year.

Enter:

Entered June 18, 1953.

(Signed) Bolon B. Turner,
Judge.

Decision—No. 29,928.

THE TAX COURT OF THE UNITED STATES.

(Caption—29,928.)

Decision.

On March 10, 1953, the Findings of Fact and Opinion of this Court in the above-entitled proceeding were promulgated. Conflicting computations of deficiency were thereafter filed by the parties. The difference between the parties is whether, in the computation of the deficiencies herein, the credit prescribed by Section 35 of the Internal Revenue Code is to be taken into account. The statute, Section 271 (b) of the Internal Revenue Code, specifically provides that the computation is to be made "without regard to the credit under section 35." See Paul Arvin Redcay, 12 T. C. 807.

After due and careful consideration of the computations and the arguments of the parties, it is

Ordered and Decided: That there are deficiencies in income tax and additions to tax for fraud for the years 1944, 1945 and 1946, as follows:

Year	Deficiency	Addition to tax
1944	$1,693.20	$ 846.60
1945	3,248.26	1,624.13
1946	1,412.43	706.22

Enter:

Entered June 18, 1953.

(Signed) Bolon B. Turner,
Judge.

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In the Supreme Court of the United States

October Term, 1954

No. 435

MANSON L. REICHERT, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the Tax Court of the United States (Pet. 26-45) is reported at 19 T. C. 1027. The orders denying petitioner's motions, which are the basis of this petition, appear in the Record at pages 255-256. The opinion of the Court of Appeals (Pet. 17-25) is reported at 214 F. 2d 19.

JURISDICTION

The judgment of the Court of Appeals was entered June 9, 1954. The time for filing the petition

for certiorari was extended by this Court to November 5, 1954. The petition for a writ of certiorari was filed on November 4, 1954. The jurisdiction of this Court is invoked under 28 U. S. C. 1254.

QUESTION PRESENTED

Whether the Tax Court acted erroneously on motions to suppress evidence allegedly based upon an unlawful disclosure of grand jury proceedings, first, in refusing to pass upon the motions until the evidence should be offered and, second, in denying the motions when petitioners rejected the opportunity to support them with proof at the conclusion of the trial.

STATEMENT

This is a civil tax fraud case involving income taxes and fraud penalties for the years 1943 through 1946.

During those years taxpayer was mayor of the City of Evansville, Indiana, and chairman of the Republican County Central Committee of Vanderburgh County, Indiana. (R. 313.) The Tax Court found that certain sums paid to taxpayer as campaign contributions were not turned over to the state organizations for use in the 1944 campaign. (R. 325-326.) It found that other sums allegedly paid as campaign contributions were in fact payments to taxpayer as recompense for assistance in obtaining the renewal of wholesale liquor distributors' licenses. (R. 325.) It also found that most of a salary paid to taxpayer's daughter by the manager of the Motor Vehicle License Bureau branch

office in Evansville was in fact a payment to taxpayer for assistance he had given in procuring the manager's appointment to that position. (R. 323.) The Tax Court determined deficiencies in income tax payments and fraud penalties amounting to $11,204.15. (R. 327-328.)

Before the Court of Appeals taxpayer did not contest these findings but submitted his case on the proposition that the Tax Court erred with respect to his motions to suppress evidence. (Pet. 25.)

At the trial before the Tax Court taxpayer filed motions to suppress evidence alleging that the cases were based upon an unlawful disclosure to the representatives of the Internal Revenue Service of testimony of witnesses who had appeared before the Vanderburgh County grand jury. (R. 36-47.) He alleged that the charges in both cases were the direct result of hearings held before representatives of the United States Government and that "all of the testimony and information then before said Government agents and in their sole and exclusive possession and control was the testimony of witnesses that had appeared before the Vanderburgh County, Indiana, Grand Jury * * * transcribed * * * and delivered by representatives of the Prosecuting Attorney's office * * * to the Government agents * * *." (R. 45.) The motions prayed that "all evidence and properties of any kind or nature, including all of the testimony herein specifically set out and alleged, and testimony not herein set out and alleged," so learned by agents of the Government, and all state-

ments made by any "witness appearing before said agents" and all property of whatever kind and nature, and "any statements, whether oral or written, already procured by said agents," be suppressed. (R. 47.) Counsel for the Commissioner denied that the facts were as alleged in the motions to suppress. (R. 56.)

The court stated that it would take the motions under advisement and rule on them when the evidence to which they were directed was offered. (R. 57.) Taxpayer then made a formal offer to prove the allegations of this motion. (R. 57.)

During the proceedings no reference was made to testimony before the grand jury. (R. 255.) At the close of the trial the court asked counsel for taxpayer if he proposed to submit any testimony on matters set forth in the motion to suppress. (R. 187.) Counsel stated that he did not, that the procedure for suppressing evidence has a proper place only in the pre-trial stage.

In orders denying the motions the Tax Court stated that at no place in the trial was any reference made to any of the evidence or testimony as being evidence to which the motion to suppress was directed and that taxpayer's counsel called none of the witnesses named and offered none of the evidence suggested in his statement prior to trial, nor offered any other evidence to establish the facts upon which his motion was based. (R. 255-256.)

The Court of Appeals found it unnecessary to decide the question of practice, whether a motion to suppress must be passed on in advance of the

trial of the principal case. (Pet. 21.) The Court of Appeals concluded that under Indiana law the provisions for secrecy of grand jury proceedings were not intended for the benefit of one who is indicted and that the need to protect the particular jury had ceased. (Pet. 24.) It held that there was no search or seizure of any information or property belonging to taxpayer, and that no constitutional rights of taxpayer are involved in this proceeding, and no constitutional ground existed for his motion to suppress evidence. (Pet. 25.)

ARGUMENT

1. The constitutional issues which taxpayer seeks to bring before this Court are not properly presented on the record of this case. As pointed out by the Tax Court (R. 255-256), there is no evidence in the record to support taxpayer's assertion that the Commissioner's action was based upon evidence improperly taken from the grand jury proceedings. As taxpayer's counsel was advised at the trial (R. 187-188), under the Rules of Practice of the Tax Court (Rule 31(f)) the motions were not evidence. But when invited to present evidence in support of the motion at the conclusion of the proceeding, he refused to do so, thus in effect abandoning his previous offer of proof. (R. 187.) Accordingly, there was no occasion or opportunity for the Commissioner either to question the taxpayer's evidence or to present contrary evidence. Such a record furnishes no foundation on which to test the constitutional issues raised by taxpayer. See *Inter-*

national Teamsters Union v. *Milk Producers,* 334 U. S. 809.

Taxpayer in his petition (p. 12) now attempts to justify his refusal on the ground that the opportunity came too late since "it is obvious that evidence which had already been admitted by the court could not be suppressed." In this case, however, the motion was directed to all evidence of any sort (R. 55-56), and if taxpayer had been correct in his theory of the law and if his motion had been supported by the evidence, all of the evidence for the Commissioner would have had to be disregarded. Taxpayer could have suffered no injury by having that issue determined at the close of the hearing. No jury is involved in a Tax Court proceeding.

Taxpayer in his petition (p. 12) further asserts that the Tax Court's overruling of the motion was erroneous "as the facts therein alleged were never controverted by respondent." In saying this he has overlooked the following statement by counsel for the Commissioner (R. 56):

> Respondent denies that the facts are as alleged in petitioner's motion to suppress. He has mentioned some dates here, and as far as the government is concerned, everything that we have used in this trial or are going to use was right in this newspaper on April 3, 1947, even down to the amounts, with the exception of one item, which is stated in the newspaper to be $7500, when we show in our petition and

will show by our proof that it was $75 instead of $7500.

Taxpayer's refusal to present evidence in support of his motion at the conclusion of the proceedings thus prevented a trial of the controverted issue.

2. The court below found it unnecessary to reach the question of practice, since upon examination of Indiana law it concluded that the provisions for the secrecy of the grand jury were not for the benefit of taxpayer and hence he has no statutory right to have his motion to suppress sustained.

The prohibition on disclosure of grand jury proceedings is limited, not absolute, and is based upon policy and not on constitutional right. Taxpayer points to no error in the court's analysis of the relevant cases, but merely repeats in identical words his argument made to the Court of Appeals and rejected by it as irrelevant. As the court pointed out, provisions for secrecy of grand jury proceedings are for the protection of the grand jury and not of the person indicted, referring to *State* v. *Bates,* 148 Ind. 610, and other cases. On this point taxpayer points to no conflicting decision of another Court of Appeals nor to any contradictory decision of the Indiana courts. There is no such error alleged in the court's interpretation of Indiana law as to call for the interposition of this court. See *Helvering* v. *Stuart,* 317 U. S. 154, 163-164; *Estate of Spiegel* v. *Commissioner,* 335 U. S. 701, 707-708.

Even if the Indiana law were less clear than it is, no constitutional rights of taxpayer are involved. As the court below remarked, there is no contention that there was any search or seizure of information or property belonging to the taxpayer. Accordingly, those cases cited by taxpayer dealing with the suppression of evidence obtained by a search and seizure contrary to the Fourth Amendmen or by wire-tapping are clearly irrelevant.

Finally, even if the facts here could be forced into the mold of unreasonable search and seizure, there is a question as to how far the Fourth Amendment is applicable to civil, as distinguished from criminal, cases. Such a question, we submit, is of too great importance to be decided in a case where it need not be reached.

Furthermore, it should not be decided on the basis of such arguments as can be presented here. There is before the Court no state of facts against which to test competing principles or to furnish the basis for the weighing of conflicting considerations. Taxpayer's motion to suppress does not even present a complete hypothetical state of facts. By the course he has chosen to pursue he has left the factual situation to sheer speculation. See *Rescue Army* v. *Municipal Court,* 331 U. S. 549, 583-584; *Alma Motor Co.* v. *Timkin Co.,* 329 U. S. 129, 136; *Parker* v. *Los Angeles County,* 338 U. S. 327, 330, 333.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

SIMON E. SOBELOFF,
Solicitor General.

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Assistant Attorney General.

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Special Assistants to the Attorney General.

DECEMBER, 1954.

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